

The Redistricting Process

While “reapportionment” involves the adjustment between states of seats in the House of Representatives based on population, “redistricting” is the process by which Assembly, Senate, Congressional and Board of Equalization districts within California are adjusted every 10 years to take into account changes in the state’s population. Districts are drawn at the beginning of each decade so they are as equal as possible in population. However, over the course of the decade, districts often become significantly unequal in population due to differential growth rates in various locations of the state. Redistricting is the way this inequality is corrected.

The 2001 redistricting will be based on population information from the 2000 census. California will gain a Congressional District because of its population increase in the last decade. A new 53-seat Congressional plan and new legislative plans taking into account population shifts must be in place for the 2002 elections.

The Census

The 2000 census took place in April of 2000. The Census Bureau attempted to count every person who resides in the United States. This includes non-citizens who have permanent or temporary residency status, refugees, the homeless, and undocumented residents. It does not include visitors to the United States.

For purpose of counting the population, the Census Bureau first divided the state into “census tracts.” There are 7,049 census tracts in California. Each tract was then broken down further into “census blocks.” There are 533,163 census blocks in California.

To the extent possible, the Census Bureau takes existing political boundaries and geographical features into account in drawing the census blocks and tracts. For the most part, census tract and block boundaries do not cross city or county boundaries. On occasion, however, they may cross political boundaries, such as when the boundaries of local political jurisdictions are changed after the block and tract

boundaries were drawn. Census data is reported by the Census Bureau according to census tracts and census blocks.

Election data is reported by election precinct. The boundaries of election precincts are often coincident with census tract or block boundaries, but not in all cases. Because voting behavior is important to assess compliance with federal redistricting requirements, it is necessary to “merge” the two forms of geography. This merger of census population numbers (reported by block and tract) and election results (reported by precinct) has been accomplished in a state database maintained by the University of California’s Institute of Governmental Studies at Berkeley. The U.C. database will be used by the Legislature for redistricting and is available to any interested member of the public as well.

The Census Bureau reported the statewide data on population to the President on the first of this year. Based on this data, the 435 Congressional seats were divided among the states on the principle of one-person, one-vote, giving California an additional seat. Starting in March, the Census Bureau provides to each state more detailed census data, broken down by census tract and census block. For each block and tract, in addition to the total population, there is a breakdown by ethnicity and voting age population. This information is often referred to as the PL 94-171 data. California should receive its PL 94-171 data late in March, but in any event, by April 1.

This PL 94-171 data is the census data that will be used for redistricting. In every census, despite the efforts of the Census Bureau, some persons are not counted. This results in what is termed the census undercount. Although there has been a dispute as to the amount of the undercount, it is generally agreed that there is more of an undercount among the poor, among non-English speakers, among minorities, and among recent immigrants than among the general population. States like California, New York, and Florida, which have more recent immigrants and minorities than most states, are most affected by the undercount.

In order to produce a more accurate census count, the Census Bureau had intended to “adjust” the initial enumeration statistically. This statistical adjustment became the subject of controversy in Congress and of a lawsuit that went all the way to

the United States Supreme Court. (*Department of Commerce v. United States House of Representatives* (1999) 525 U.S. 316.) The Supreme Court held that the census data could not be statistically adjusted for purposes of reapportioning the congressional seats among the states, but indicated that a statistical adjustment would be permissible for purposes of redistricting and distribution of funds under federal formulas. In the summer and fall of 2000, the Secretary of Commerce issued a formal regulation that established a process whereby the determination of whether to do a statistical adjustment for these purposes would be made by the Director of the Census Bureau in conjunction with a panel of Census Bureau professionals. When now Secretary of Commerce Evans assumed office in 2001, he unilaterally rescinded that regulation, insisted that it was his responsibility to make the determination whether to “adjust,” and indicated that he would consult with the Census Bureau professionals and with “other” knowledgeable persons.

The City of Los Angeles and various other local jurisdictions and individuals brought suit in federal district court challenging Secretary Evans’ rescission of the regulation. Subsequently, in March, 2001, the panel of Census Bureau professionals released a report stating that they could not determine with “certainty” that adjustment would improve accuracy in time for the April 1 deadline for release of PL 94-171 data. Secretary Evans has announced that adjusted data will not be released at this time (that is, in time for redistricting), but says that he has not ruled out adjustment at a later date that would then produce adjusted census data that could be used for federal funding formulas. The City of Los Angeles, et al., have amended their lawsuit to add a challenge to the “certainty” standard by which the decision not to adjust was made. At this point, it appears that the PL 94-171 data, while containing an undercount error that has not been statistically corrected, will be the only census data available for redistricting.

Redistricting – Legal Parameters

The United States Constitution

The United States Constitution requires that representatives to Congress be apportioned among the states on the basis of population, according to the decennial census. (Art. I, § 2, cl. 3; Fourteenth Amend., § 2.)

For purposes of redistricting, population means everyone, including not only voters but also minors, noncitizens (documented and undocumented), and nonvoting citizens. If a state wants to use some basis other than the census data for either Congressional or legislative redistricting, such as registered voters, it must demonstrate both that the alternative basis is nondiscriminatory and that it is “substantially equivalent” to using the total census population. (*Burns v. Richardson* (1966) 384 U.S. 73.)

In 1962, the United States Supreme Court decided that the U.S. Constitution requires a one-person, one-vote standard for both federal and state redistricting. (*Baker v. Carr* (1962) 369 U.S. 186.) There are several different ways to measure population disparities among districts for purposes of the one-person, one-vote standard. All of these methods measure how far the populations of the proposed districts deviate from the population of the “ideal” district. The absolute or the relative mean deviation of individual districts may be measured. The absolute or relative mean deviation, or the mean deviation, of all the districts may be measured. Finally, the range (deviations of the most and least populous districts) may be measured in absolute, relative, or overall terms, or as a ratio. All of these methods have been used by the courts at different times. Use of different methods of calculating deviation will sometimes give different results.

There is no minimum acceptable level of deviation for Congressional plans. Populations of Congressional districts must be as nearly equal “as is practicable.” (*Wesberry v. Sanders* (1964) 376 U.S. 1.) The Supreme Court has said “[t]here are no *de minimis* population variations, which could practicably be avoided,” but which nonetheless meet the standard of Article I, section 2 without justification. (*Karcher v. Daggett* (1983) 462 U.S. 725.)

For state legislative redistricting, the federal rule is not as strict. But in 1973, the California Supreme Court in *Legislature v. Reinecke* (1973) 10 Cal. 3d 396, appointed special masters to develop redistricting plans for the Legislature and for the Congress. The court specifically approved their criteria for redistricting, which included: Population equality as nearly equal as possible in Congressional districts and “within 1 percent of the ideal” in legislative districts.

The U.S. Constitution also prohibits discrimination on the basis of race. (Fourteenth Amend., § 1.) This prohibition has been held not only to prohibit discrimination against minority groups, but also to require a compelling state interest to justify districts drawn on the basis of race to increase the voting power of a minority group. (*Shaw v. Hunt* (1996) 519 U.S. 804.) (As noted below, the Supreme Court has suggested that in some limited cases compliance with the federal Voting Rights Act can constitute a compelling state interest that could justify a district drawn on the basis of race.) It is impermissible to use race as a proxy for political party preference. (*Bush v. Vera* (1996) 517 U.S. 952.)

The Federal Voting Rights Act

The Voting Rights Act of 1965 imposes additional requirements and procedures on state redistricting. It prohibits denial or abridgement of the right to vote on account of race, color or membership in a language minority group. Ways of abridging minority voting rights may include fragmenting minority populations among different districts (“cracking”) or overconcentrating minorities in one or more districts (“packing”).

Section 2 of the Voting Rights Act applies to all jurisdictions. It prohibits a state from imposing any standard that deprives minority group members of an equal opportunity to participate in the political process. Because of an amendment to the Voting Rights Act, it is not necessary to prove that a redistricting plan was adopted with a discriminatory intent. A “results” test is used; if the plan has the practical effect of denying effective participation in the political process to minorities, it violates the Act. Of course, intentional discrimination also violates the Act.

Section 5 of the Voting Rights Act applies in jurisdictions in which a finding has been made by the Justice Department, according to standards in the Act, that minorities have been denied an effective voice in the political process. One of the standards set up in the Act was a mathematical measure under which low voter registration and turnout would result in a jurisdiction being covered by Section 5. In California, Section 5 applies to Kings, Merced, Monterey, and Yuba counties. In jurisdictions covered by Section 5, the Act prohibits any change in election laws or procedures that causes retrogression in the voting power of minority groups. As with Section 2, proof of discriminatory intent is not required; a plan is illegal if its effect is retrogressive.

Section 5 requires “preclearance” for redistricting plans affecting covered jurisdictions. Preclearance may be obtained either by submitting the proposed changes to the United States Justice Department, or by obtaining a declaratory judgment in the U.S. District Court for the District of Columbia that the changes do not violate Section 5. Information that must be submitted with the changes includes election return information, including the race or language group of each candidate, and the number of registered voters, by race and language group, for each precinct in the election for a period covering ten years. Also required is evidence of publicity and public participation, especially by minority groups, including transcripts of public hearings, on the proposed changes.

While the United States Supreme Court has held, in the *Shaw v. Reno* line of cases, that race may not be the predominant factor in drawing district lines, it has also recognized the State’s need to comply with the Voting Rights Act. In this context, the Court has taken a narrow approach to the Voting Rights Act. (*Bush v. Vera* (1996) 517 U.S. 952.)

The California Constitution

The California Constitution (Art. XXI) requires the Legislature to adjust the boundaries of Senate, Assembly, Board of Equalization and Congressional seats in 2001. There can be only one redistricting each decade.

The California Constitution also requires that:

- Members of the Senate, Assembly, Congress and the Board of Equalization be elected from single-member districts.
- The population of all districts of a particular type be reasonably equal.
- Every district be contiguous.
- Districts of each type be numbered consecutively north to south.
- The geographical integrity of local government boundaries and geographical regions be respected to the extent possible.

In the *Reinecke* case (10 Cal.3d 396), the California Supreme Court narrowed the permissible population deviation between districts. The California Supreme Court has also recognized an additional important standard for redistricting:

- Respect for communities of interest of various kinds.

The United States Supreme Court has similarly recognized the importance of communities of interest. (*Lawyer v. Department of Justice* (1997) 521 U.S. 567.) Communities of interest may be defined by the many different kinds of factors that draw people together, including, but not limited to, socio-economic status, shared political issues, transportation and media structures, schools and churches, community organizations, etc. Race in and of itself may not be used to define a community of interest. (*Miller v. Johnson* (1995) 515 U.S. 900.) It should be noted that, in terms of redistricting, a community of interest is generally considered significant only if it is geographically compact.

Legislative Procedure

The Legislature adopts a redistricting plan in the same manner as it adopts any other bill. Because the bills must include the specific boundaries of each district, and because the districts must take into account the 2000 census data, drafting cannot begin until after the census data is delivered and analyzed, and until public hearings have been held, testimony taken, and transcripts of that testimony made available to the public and to the Legislature and its staff.

Members of the public will have the opportunity to provide input prior to the Legislative drafting of redistricting plans, including submission of their own proposed plans. There will also be an opportunity to present testimony in a conference committee as to the appropriateness of redistricting plans drafted for the Legislature prior to their adoption. Maps and analyses of plans drafted for the Legislature will be provided in lieu of printed text for these purposes.

In order for a redistricting bill to go into effect, it must be enacted (passed by the Legislature and signed by the Governor). This is a constitutional requirement. (Art. IV, §§ 8(b) and 10(a).)

Because of the late date on which the state receives the PL 94-171 data, the time necessary to merge that data with precinct results, and the requirement for public hearings and reported transcripts, redistricting bills are generally presented to the Assembly and the Senate in the form of a conference report as prescribed by the Joint Rules of the Legislature. (Joint Rule 62.5.)